Supreme Court, U.S.
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# Supreme Court of the United States

**October Term, 1961**

**No. 468**

In the Matter of the Application
of
STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,
*Petitioners-Appellants,*
*against*
WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,
*Respondents-Respondents,*
directing them to discontinue a certain school practice,
and
HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSEMARIE PETELENZ, DANIEL J. REFHIL, THOMAS DELANEY and EDWARD L. MACFARLANE,
*Intervenors-Respondents.*

**On Writ of Certiorari to the Court of Appeals of the State of New York**

## MOTION OF SYNAGOGUE COUNCIL OF AMERICA AND NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

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New York 28, New York

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The undersigned, as counsel for the Synagogue Council of America and the National Community Relations Advisory Council, and on their behalf, respectfully move this Court for leave to file a brief *amici curiae* in the above-entitled action.

The Synagogue Council of America is a co-ordinating body consisting of the organizations representing the three divisions of Jewish religious life: Orthodox, Conservative and Reform. It is composed of:

Central Conference of American Rabbis, representing the Reform rabbinate;

Rabbinical Assembly of America, representing the Conservative rabbinate;

Rabbinical Council of America, representing the Orthodox rabbinate;

Union of American Hebrew Congregations, representing the Reform congregations;

Union of Orthodox Jewish Congregations of America, representing the Orthdox congregations;

United Synagogue of America, representing the Conservative congregations.

The National Community Relations Advisory Council is a co-ordinating body comprised of the following national lay Jewish organizations, in addition to the congregational bodies mentioned above, concerned with American Jewish community relations:

American Jewish Congress;

Jewish Labor Committee;

Jewish War Veterans of the United States;

and fifty-two local Jewish Community Councils, including all the major cities in the United States.

The organizations affiliated with the Synagogue Council of America and the National Community Relations Advisory Council include in their membership the overwhelming majority of Americans affiliated with Jewish organizations. We believe, therefore, that in submitting this brief we speak for the greater part of American Jewry.

The present case raises questions as to the constitutionality of the practice of the daily recitation of a religious prayer in public schools. The prayer in question was composed by state officials. By regulation of the respondent school board, it is recited daily in each class in the schools under its jurisdiction. The petitioners claim that this requirement violates the First Amendment to the United States Constitution as made applicable to the states by the Fourteenth Amendment. The undersigned organizations support that claim.

The petitioners are parents of children attending classes in which the recitation of the prayer is required. The suit was brought against the five members of the Board of Education of Union Free School District No. 9, New Hyde Park, New York. A group of parents of children in the schools who support recitation of the prayer were allowed to intervene; they appear here as respondents.

The courts of New York State dismissed petitioners' claim that the prayer recitation requirement violated their constitutional rights. In doing so, however, they required that the respondent school board take steps to see that participation in the exercise by any pupil was not "compulsory." This was done on the theory that petitioners' rights would not be violated, even by recitation of a religious prayer, if they could have their children excused from participation in the exercise. The state courts further

found, despite allegations in petitioners' complaint to the contrary and without hearing any evidence on the point, that the prayer in question was not "sectarian."

The undersigned organizations are deeply committed to the traditions of the Jewish religion. Many of them are directly involved in maintaining religious worship and in the vital task of religious teaching. They believe, however, that such worship and teaching are not appropriate in public schools.

In taking this position, the undersigned organizations follow their firm attachment to the constitutional principle of separation of church and state and their unwavering support of the constitutional guarantee of religious freedom. In support of their views, they have in the past submitted briefs *amicus curiae* to this and other courts, most recently in *Gallagher* v. *Crown Kosher Super Market* (October Term, 1960, No. 11) and *Braunfeld* v. *Gibbons* (October Term, 1960, No. 67), and earlier in *People ex rel. McCollum* v. *Board of Education*, 333 U. S. 203 (1948).

If permitted to submit a brief in this case, the undersigned will present arguments that are based on their experience in counselling with millions of Jews in this country. In particular, they will argue that it is entirely illusory to believe, as did the courts below, that the element of coercion in the public school atmosphere can be eliminated by allowing children to be excused from ceremonies ordained by school officials and conducted by their classroom teachers. They will argue that the decision below cannot be affirmed without ignoring the fact that, despite the right to withdraw, there is "an obvious pressure upon children to attend * * *." Mr. Justice Frankfurter concurring in *People ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, 227 (1948).

The undersigned organizations will also seek to show, on the basis of their knowledge as spokesmen for religious groups, that the conclusion reached below that the challenged prayer is non-sectarian is erroneous, and that in fact by its very nature, prayer cannot be non-sectarian. They will argue that the prayer, formulated by state officials, is in effect a manifestation of a new sect, "public school religion," which fails to represent the deeply-felt views of those committed to other sects. They will also show that the manner of its recitation cannot be accepted by all Jews.

We have sought the consent of counsel for the parties to the filing of this brief. Counsel for petitioners consented. Counsel for respondent school board refused. We have not received a response from counsel for the intervenors.

Respectfully submitted,

LEO PFEFFER
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15 East 84th Street
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January 31, 1962